IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7060 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI VALJIBHAI GOHIL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7060 of 2001

MR KAMEN SHUKLA for MR AR SHAIKH for Petitioner No. 1

MR S.S.PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 08/11/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Surat

City, Surat, vide order dated May 5, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention order dated May 5, 2001 manifest that the petitioner is a dangerous person within the meaning of Section 2(c) of the Act as two cases for commission of the offences under IPC are registered against the petitioner which are pending at investigation stage. Besides this, statements of two anonymous witnesses are recorded in an unregistered offence, and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, power under Section 9(2) of the Act is exercised by the detaining authority by not disclosing the names of the witnesses and accordingly detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing and setting aside the impugned order of detention and setting him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. Mr. Kamen Shukla, learned advocate for the petitioner has restricted his arguments only on the aspect of delay in recording the order of detention without recording satisfactory explanation on the part of the detaining authority and therefore, order of detention is vitiated. Besides this, he has also contended that in the impugned order of detention, the detaining authority has considered two cases registered against the petitioner under IPC. In the said cases, the first case is registered on November 21, 2000 and the second case is registered on February 23, 2001 whereas the order of detention came to be passed on May 5, 2001. Therefore, there is a delay of two months in passing the order of detention which is not explained by the detaining authority. He, therefore, urged to allow the petition by quashing and setting aside the order of detention and setting the petitioner at liberty forthwith.

5. So far as privilege claimed under Section 9(2) of the Act is concerned, according to the learned counsel it cannot be said to be genuine in the absence of reply affidavit filed on behalf of the detaining authority. Therefore, on both these grounds, the order of detention is vitiated. He, therefore, urged that the petition may

be allowed by quashing and setting the impugned order of detention and setting the petitioner at liberty forthwith.

6. Mr. S.S.Patel, learned AGP appeared on behalf of the respondent State has opposed the petition by making oral submission. He contended that the delay of two months cannot be called delay on the part of the detaining authority as the order of detention is passed by the detaining authority after considering all the aspects of the matter and also the continued involvement of the petitioner in antisocial activities and, therefore, he urged to dismiss the petition.

7. I have considered the submissions advanced by the learned advocates appearing for the parties. I have perused the averments made in the petition and the documents annexed therewith. I have also considered the impugned order of detention passed by the detaining authority.

8. There is no manner of doubt that two offences are registered against the petitioner. The last offence is registered on February 23, 2001 whereas the impugned order of detention came to be passed on May 5, 2001. But prior to recording of the order of detention, the detaining authority has recorded statements of two anonymous witnesses in an unregistered cases on April 11, 2001 upon which reliance is placed while passing the order of detention against the petitioner but no offence is registered against the petitioner on the basis of the said statements and, therefore, it is clear that the said statements are recorded with a view to fill up the gap between the date of registration of the last offence against the petitioner and the order of detention, which is about two months.

9. In the case of ANAND PRAKASH V. STATE OF UP, AIR 1990 SC 516, it has been observed by the Supreme Court that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

10. A similar view is also expressed by this Court in the case of ELESH NANDUBHAI PATEL V. COMMISSIONER OF POLICE, AHMEDABAD CITY, 1997 (1) GLH 381.

11. Applying the principles enunciated by the Supreme Court and this Court in the aforesaid two judgements to the facts of the present case, it is clear that the present case is identical to the case referred to above.

In the present case also the last offence against the petitioner is recorded on February 23, 2001 which cannot be a proximate cause and therefore unexplained delay makes the order of detention not proximate and vitiates the order of detention itself. So far as the contention made by the learned AGP with regard to recording of the statements of independent witnesses is concerned, it has no substance in view of the fact that with a view to cover up the gap between the registration of last offence and the order of detention, statements of two anonymous witnesses have been recorded without registering any offence against the petitioner on the basis of the said statements and, therefore, on the ground of delay alone, the order of detention is required to be quashed and set aside and the petition is required to be allowed.

12. Besides this, the detaining authority has claimed the privilege under Section 9(2) of the Act by not disclosing the identities of those anonymous witnesses whose statements are recorded in an unregistered cases. It may be noted that the detaining authority has not filed any affidavit in reply and, therefore, I am of the opinion that the privilege claimed by the detaining authority cannot be called genuine in the absence of affidavit in reply and therefore, on the aforesaid two grounds, the order of detention stand vitiated and the petition deserves to be allowed by setting the petitioner at liberty forthwith.

13. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated May 5, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*